

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

May 29, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3527

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE INTEREST OF GABRIEL R. M.,
A PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

Appellant,

v.

GABRIEL R. M.,

Respondent.

APPEAL from an order of the circuit court for Outagamie County:
JOSEPH M. TROY, Judge. *Affirmed.*

MYSE, J. The State appeals an order dismissing a delinquency petition and a petition to waive Gabriel R. M., a juvenile, into adult court. The State contends that the circuit court erred when it dismissed the petitions with prejudice under § 48.24, STATS., and a local court rule based on the delay between completion of the investigation and referral to juvenile intake. Because this court concludes that the district attorney is obligated to refer the case to the juvenile intake office within a reasonable time under § 48.24 STATS., and failed to do so, and that the local court rule requiring that juvenile matters be referred to the juvenile intake worker within fourteen days after the investigation is

completed is a valid court rule that was violated in this case, the order is affirmed.

Gabriel was born on October 28, 1977. On or about March 27, 1995, a Town of Grand Chute police officer received information that implicated Gabriel in a sexual assault that occurred in December 1994. The officer conducted an investigation and referred the results to the Outagamie County district attorney's office on April 11, 1995. Although Gabriel's date of birth was on the referral, the referral was submitted on a form the district attorney's office reserved for adult offenders. As a result, the assistant district attorney assigned to the case assumed Gabriel was an adult and failed to refer the case to the juvenile intake office. The assistant district attorney did not take action on the case until May 17 when she filed an adult criminal complaint. On May 18, a warrant was authorized for Gabriel's arrest. At the time the warrant was authorized, there was an existing open file on Gabriel involving an underage drinking violation.

On October 9 or 10, Gabriel was picked up on the warrant and a capias that had been authorized for the underage drinking violation. Gabriel made an appearance in court on October 11 and pled guilty to the underage drinking violation. The State, however, discovered that Gabriel was a juvenile and moved to withdraw the criminal complaint on the sexual assault. The court commissioner permitted the State to withdraw the complaint without prejudice. The assistant district attorney then contacted the investigating officer to request that he refer the case to juvenile intake. On October 12, the juvenile intake office received the referral which contained supplemental information regarding a police interview with Gabriel conducted on October 11. The intake office referred the case to the district attorney's office on the same day and a delinquency petition and a petition to waive Gabriel into adult court were filed with the clerk of court on October 13.

Gabriel made an initial appearance on October 24 and moved for dismissal with prejudice based on the untimely filing of the petition. The court commissioner denied the motion for dismissal. Three days later at a waiver hearing, Gabriel renewed his motion to dismiss before the circuit court. The circuit court found that the State's delay in charging Gabriel was not occasioned by an intentional manipulation of the trial dates but was the result of negligent failure to observe Gabriel's juvenile status. The circuit court, however,

concluded that failure to refer the matter to the juvenile intake office until six months after the investigation was completed violated § 48.24, STATS., because the matter was not referred to intake within a reasonable time. The court also concluded that the delay violated an Outagamie County court rule which requires that the information be referred to intake within fourteen days of completion of the investigation. The court therefore ordered both the petition for delinquency and the petition for waiver to be dismissed with prejudice.

The State contends that the delay between the completion of the investigation and referral to the juvenile intake office did not violate § 48.24, STATS. The interpretation of a statute and its application to undisputed facts presents a question of law that this court reviews de novo. *State v. Keith*, 175 Wis.2d 75, 78, 498 N.W.2d 865, 866 (Ct. App. 1993).

Section 48.24, STATS., provides in relevant part:

(1) Except where a citation has been issued under s. 48.17(2), *information indicating that a child should be referred to the court as delinquent*, in need of protection of services or in violation of a civil law or a county, town or municipal ordinance *shall be referred to the intake worker*, who shall conduct an intake inquiry on behalf of the court to determine whether the available facts establish prima facie jurisdiction and to determine the best interests of the child and of the public with regard to any action to be taken.

....

(5) The intake worker shall recommend that a petition be filed, enter into an informal disposition or close the case within 40 days or sooner of receipt of referral information. ... The judge shall dismiss with prejudice any such petition which is not referred or filed within the time limits specified within this subsection. (Emphasis added.)

Section 48.24(1), STATS., provides that the information indicating that the juvenile should be referred as delinquent shall be referred to the intake worker. The use of the word "shall" is presumed to be mandatory, unless a different construction is necessary to carry out the legislature's clear intent. *In re C.A.K.*, 154 Wis.2d 612, 621, 453 N.W.2d 897, 901 (1990). Because § 48.24 also directs the intake worker to take certain action within a specified time and the statutes set up the entire process for dealing with juvenile delinquency cases, this court concludes that referral to juvenile intake is mandatory under § 48.24(1). This interpretation is consistent with the purposes of the statute and the statutory provisions relating to this requirement.

Although § 48.24(1), STATS., does not contain a specific time limit to refer the case to the intake worker, the entire juvenile code demonstrates a clear intent by the legislature to ensure prompt disposition of cases involving juveniles. See *Id.* at 622, 453 N.W.2d at 902. To that end, the legislature has established time limits within which the intake worker must act and within which the district attorney must act after the matter is referred to his or her office by the intake worker. See §§ 48.24(5) and 48.25(2), STATS.

This court therefore concludes that the language of the statute requires that the matter be referred to the intake worker within a reasonable time. A contrary reading would be inconsistent with the overall purpose of the juvenile code and the requirement that the case be referred to the intake worker. If the investigating officer and district attorney were able to delay the referral to intake indefinitely, it would undercut the specific time limits and the overall purpose of the statutes. Accordingly, this court concludes that the circuit court properly determined that the referral to intake must take place within a reasonable time after the investigating officer has completed his investigation.

The circuit court found that a delay of six months was unreasonable under the circumstances of this case. In reaching this conclusion, the circuit court considered that Gabriel's birth date was clearly available on the information submitted to the district attorney's office by the investigator and was included on the adult criminal complaint. Moreover, the alleged victims of the sexual assault were minors, giving the district attorney's office reason to be concerned about Gabriel's age. Nonetheless, the district attorney's office failed to realize Gabriel's juvenile status and refer the case to juvenile intake until six months after the completion of the investigation. The circuit court also noted that the delay may have prejudiced Gabriel's ability to challenge the petition to

waive him into adult court because the hearing was now being held one day before his eighteenth birthday. This court agrees that a six-month delay in referring the case to juvenile intake was unreasonable under these circumstances.

The State contends that the delay was largely caused by Gabriel's absence from the court's jurisdiction. The State argues that if Gabriel had been in the court's jurisdiction, he would have been picked up on the warrant earlier and the district attorney's office would have noticed his juvenile status earlier. The district attorney, however, could have referred the matter to the intake office at any time during the six months whether Gabriel was present within the jurisdiction or not.

Moreover, it is unclear from the record that Gabriel was absent from the jurisdiction during the period of this delay. The record discloses that Gabriel failed to make two appearances on the ordinance violation in February 1995. Based on his nonappearance a *capias* was issued. Gabriel's mother responded that he was in Texas and was expected to return on March 1, 1995. The warrant for his arrest as an adult was issued on March 17, 1995. Because this date was after Gabriel's expected return date, it is unclear that he was in fact absent from the jurisdiction. The State relies on nonservice of the warrant as evidence of his absence. This court cannot conclude that such a conclusion is reasonable or supported by the evidence in this record.

In addition, an Outagamie County court rule requires that the case be referred to the intake worker within fourteen days of the completion of an investigation. There is no dispute that the local court rule was violated in this case. The State, however, argues that the court rule is invalid because it is unauthorized by the juvenile code and conflicts with the provisions of the juvenile code. Neither assertion has merit.

Local court rules may be adopted that are consistent with the efficient processing of court matters. See *Community Newspapers, Inc. v. West Allis*, 158 Wis.2d 28, 32, 461 N.W.2d 785, 787 (Ct. App. 1990). This local court rule does not conflict with any of the provisions or purposes of the juvenile code. The rule does not contravene any statutory authority granted to the district attorney or the time limits within the juvenile code. Even though § 48.24, STATS., does not establish a time limit for referring the case to intake, that

does not mean that a time limit is inconsistent with the statute. The juvenile code clearly requires the efficient processing of juvenile matters. This time limit is consistent with the philosophy of the juvenile code, does not contravene any specific time limits provided by the juvenile code and is therefore a proper exercise of the court's power to establish procedural rules.

Next, the State contends that the court erred by dismissing the petitions with prejudice. The circuit court's decision to dismiss a case with prejudice is discretionary. *Johnson v. Allis Chalmers Corp.*, 162 Wis.2d 261, 273, 470 N.W.2d 859, 863 (1991). The court's discretionary decision will be affirmed as long as it has a reasonable basis and was made in accordance with accepted legal standards and the facts of record. *State v. Jenkins*, 168 Wis.2d 175, 186, 483 N.W.2d 262, 265 (Ct. App. 1992).

Because Gabriel was prejudiced by the delay and the district attorney's office negligently failed to discover his juvenile status for six months, this court concludes that the circuit court properly exercised its discretion by dismissing the petitions with prejudice. Further, this court notes that the dismissal with prejudice is consistent with the other provisions of § 48.24, STATS., and the purpose of ensuring prompt disposition of juvenile cases. Section 48.24(5), STATS., which requires the intake worker to make his or her recommendation within forty days of receiving the referral, states that "the judge shall dismiss with prejudice any such petition which is not referred or filed within the time limits specified within this subsection." There is no reason to believe the delay in referring the case to intake should be treated any differently from a delay by the intake worker in taking action. The type of delay does not change the prejudice to Gabriel or the fact that the district attorney's office negligently failed to recognize his juvenile status until six months after the investigation was completed. Accordingly, the court properly exercised its discretion when it dismissed the petitions with prejudice.

Finally, the State argues that it showed good cause for the delay because it was inadvertent and therefore the court erred when it dismissed the petitions. The State relies on § 48.25(2)(a), STATS., which provides that if the court finds good cause for the district attorney's failure to file the petition within twenty days of receiving the referral from intake, it should not dismiss the petition with prejudice. This court rejects this argument for several reasons. First, the good cause determination does not apply in this case because the court dismissed the case under § 48.24, STATS., not § 48.25, STATS. The court is not

required to determine whether there is good cause before dismissing under § 48.24. Second, one of the considerations in deciding whether there is good cause shown is whether the juvenile was prejudiced by the delay. See *In re Jason B.*, 176 Wis.2d 400, 407, 500 N.W.2d 384, 387 (Ct. App. 1993). In this case, Gabriel was prejudiced because the delay resulted in the waiver hearing being held the day before his eighteenth birthday. Further, while the delay may have been inadvertent, this court does not agree that a six-month delay based on the negligence of the district attorney's office constitutes good cause under § 48.25(2)(a), STATS.

Because this court concludes that the circuit court reasonably concluded that the delay violated both § 48.24(1), STATS., and the local court rule, the order is affirmed.

By the Court. – Order affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.